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XV CICLO

ABSTRACT

DIFFERENZIAZIONE E NORMAZIONE:

PRIMARIA E SECONDARIA

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Abstract

The object of the present work is the analysis of the principle of differentiation in the system of the sources which in the context of the processes of decentralisation, federalism and autonomy, is identified in an “*adaequatio rei et iuris*” relation, functional in the individualisation of a renewed capacity for the understanding and achievement of a “policy of differences”.

This is a perspective which it is useful to analyse as the method of differentiation has for some time been assuming more and more importance in both the European and national legal system with the aim of realising common interests with regard to diversity.

In the first part, the themes of European integration in the management of national differences are dealt with. Fundamental to this, is the study of the techniques of the EU government that have led to a general change in the national political-judicial scenarios, giving rise to an ever closer process of integration between member states, through the enhancement of the value of differences.

Then follows an analysis of the differentiation of the forms and conditions of the regional autonomy foreseen by Constitutional Law 3/2001, which, in the new article 116 of the Constitution establishes at paragraph 3 that “further forms and particular conditions of autonomy” regarding the subject of the 3rd paragraph of art. 117 are

assigned to the Regions: the Region thus assumes the role of protagonist in the search for original solutions to enhance its own autonomy.

It is clear that the Constitutional Law n°3/2001, with the opening up of the model of regionalism to the perspective of the differentiation of the single regional autonomies, is situated in a position of prime coherence and close consequentiality with the supreme principles of the recognition and promotion of local autonomies. (Art. 5 of the Constitution)

The effective realisation of differentiated regionalism is anything but a constitutionally obliged outcome; it is, rather, an ongoing dialectic process not only relying on the capacities of the individual regions to negotiate with the Government over the forms and conditions of differentiation, but also, and above all, left to the free dynamics of parliamentary political forces, able to re-establish the complex configuration of the relations between state sources and regional sources in terms very different from the basic constitutional model. An almost inevitable consequence is the need to realise that the same state source (whether law or regulation) could become characterised by differentiated judicial regimes due to the different regional contexts that are, in turn, referred to.

Finally, the dissertation is aimed at a precise analysis of the autonomies of the local authorities through the instrument of the council statute, considered to be the

maximum expression of the power of local legislation, which is no longer expressed as a “preconceived subjection” in the outline of the system of sources.

The reform of title V of the Constitution, proposes an autonomy based on each “own” statute as an expression of an identity defined by dimension and interest.

An indispensable corollary of this supposition is, naturally, given by the consideration that, “the local autonomy of subsidiarity and differentiation, and also the autonomy of statutory constitutionalisation, no longer correspond to an autonomy built on powers and functions assigned from above, because the diversity of programmes, results, objectives, (all connected to institutional, territorial, demographic, social and economic diversity) places differentiation in a new context, aimed at objectives that are evaluated in terms of efficiency and efficacy”.

Naturally this whole subject area is in continual evolution, starting from the adjustment of the norms that implement the Constitutional principles through the formulation of local statutes which, in any case, define the particular fields for their application. On the other hand, the functional lack of the norms for implementation has a negative effect on their qualitative representation of the new needs emerging from the complexity of local realities and the continual renewal of the agents who are the protagonists in a territory.

Given that the various phases cannot be conceived as part of a unitary process, the acknowledged autonomy of the council statute cannot avoid considering cooperation in participation with the State and the Regions.

As Hegel would say, we could assert that “ The bud disappears when the blossom breaks through, like the flower with the conception of the fruit” as both flow together in an organic unity where they are equally necessary.